Warning: Senate Passes McCarran Bill to "Repeal" 5th Amendment

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Full Story and Text:

Last Refuge of Dissenters in Danger

I

Late Thursday, July 9, at the tail end of a weary night session, the U. S. Senate passed a new McCarran bill. This one might be termed a bill to repeal the Fifth amendment. It would give Congressional investigating committees a means of destroying the last Constitutional refuge of "uncooperative" witnesses—that provision of the Fifth amendment which says no man shall be compelled "to be a witness against himself", the so-called privilege against self-incrimination.

Little attention was paid the bill in the press. News of its passage was swamped in dramatic events. That was the day J. B. Matthews was forced to resign as executive director of the McCarthy committee. That night, just before debate began on the bill in the Senate, the wires carried the news of Beria's downfall in Moscow. Newspapers as conscientious as the *New York Times* and the *Washington Post* were able to give only a few paragraphs on inside pages to passage of the bill.

Yet this bill may prove fateful for liberty in America. If passed, it would (as pointed out in the *Weekly* for May 16) create an unwilling army of informers. Anyone who has ever had Left wing associations of any kind would lose the last remaining means of refusing to answer questions which might bring others into disgrace in the current American heresy hunt. Going to jail for contempt would be the only recourse left for conscientious objectors to Congressional inquisition.

The bill has gone to the House, where it was automatically routed to the Judiciary committee. Normally, this late in the session, passage in the House would be doubtful. There would be protracted hearings and debate. But this bill was reported by the Senate Judiciary committee without public hearings. The same thing could happen in the House, where McCarran's ally, Walter of Pennsylvania, is still the most powerful single influence on the House Judiciary committee. Walter and McCarran do not always see eye to eye, but another McCarran-Walter bill is possible. So is hasty passage without debate in the crowded hours of a Congress eager to wind up its business and get home.

If the bill reaches the House floor, passage is certain. Rarely has so fundamental a legal change been proposed with so little public discussion and understanding. The average member of Congress will see it only as a bill "to make Communists talk." Actually the measure would have the force almost of a constitutional amendment, undercutting a fundamental right which has its origin in the same grievances which drove the Pilgrim Fathers to Holland and then America. The 5th amendment privilege arose in the early Seventeenth century struggle against compulsory testimony under oath before those inquisitorial courts of Star Chamber and High Commission with which the English Crown sought to root out political and theological dissent as subversive heresy.

The bulk of this week's issue is being devoted to the bill. The hope is to Paul Revere enough interest to block the measure in the House. It is important to focus the attention of every organization interested in civil liberty upon the bill, to demand that full public hearings be held in the House, and to organize pressure on members of Congress to vote against the measure if and when reported out. The time necessary for hearings would be enough to block passage this session.

This is another in the series of those "McCarran bills" which are creating a new America, remodelled for conformity, unsafe for dissent, a chrome-plated version of George Orwell's 1984. McCarran continues to be the principal instrument for the achievement of the U. S. Chamber of Commerce's blueprint for thought control in America. The new "immunity" bill is in the same pattern as the McCarran bills which established the Subversive Activities Control Board and set up proto-Fascist regulations over immigration, our own little Iron Curtain.

II

This is the third year McCarran has been trying to get a bill through Congress which would enable investigating committees to bypass the Fifth amendment. In 1951 the McCarran bill for this purpose got out of committee but failed to come up for a vote in the Senate. In 1952, it was passed but then buried on a vote to reconsider. This year it almost achieved passage on the consent calendar in May but was blocked by Senator Taft (See Hat's Off in the *Weekly* for May 30). Last Thursday, July 9, at around 9 p. m. the measure was called up for a vote by the acting majority leader, Knowland.

The bill would compel a witness to give up his privilege against self-incrimination by granting him immunity from prosecution on any matter to which he testified. "The most important thing," McCarran told the Senate, "is to expose the conspiracy. Punishment of individual conspirators is a secondary thing." Actually the mode of punishment in the witch hunt is by publicity—to disgrace and deprive of employment anyone who has had Left connections in the past. The "immunity" does not protect from a public smearing.

The so-called "conspiracy" is so tenuous that even the top leaders of the Communist party have been prosecuted for nothing more tangible than "conspiracy to advocate." There is still no way to prosecute a man for support of Left wing causes or past membership in the Communist party. McCarran admitted that most of the victims are guilty of no crime for

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A Southern "Reactionary" Defended The Bill of Rights . . .

which they could lawfully be prosecuted when he expressed the conviction that "many witnesses who claim their privilege . . . are improperly asserting that privilege." Fear of frame-up, unwillingness to inform on others and opposition in principle to political interrogation have led many to invoke the privilege, as indeed it was invoked three centuries ago under similar circumstances by dissenters.

For gangsters and criminals, the immunity offered by the McCarran bill would be a Godsend. For them, the immunity would be real enough. But for today's political dissenters and non-conformists, the "immunity" would be spurious. This is a device for widening the impact of terror-by-inquisition and enlarging the blacklist.

The first voice raised in objection Thursday night was that of Kefauver (D. Tenn.) but he limited himself, as he has in the past, to arguing that such immunity should not be granted without permission of the Attorney General. The Senate's one dependable liberal, Lehman (D., N. Y.) rose to fight the bill in principle. Kilgore (D., West Va.) had obtained a series of letters opposing the McCarran bill from Governor Dewey of New York, former Attorney General Francis Biddle, John W. Davis, Telford Taylor, Paul A. Freund, Dean Erwin N. Griswold of Harvard Law School, former Attorney General William D. Mitchell, Professor Lindsay Rogers, former Solicitor General Philip Perlman, and Donald Richberg. Lehman put these letters (by some oversight Richberg's was not included) in the Congressional Record. Lehman said the bill struck at the separation of powers and would "encourage persons to seek to avoid the penalties of crimes by accusing others."

Monroney (D. Okla.) wondered whether the bill might not be used by a clever lawyer or by a small group entrenched in some Congressional committee to give immunity to "a person who perhaps should be prosecuted for a million dollar income tax fraud, or even . . . on a charge of treason." Kefauver agreed, and repeated his favorite argument—that David Greenglass could have used this means to escape prosecution in the Rosenberg case. John Sherman Cooper (R. Ky.)—the only Republican Senator to oppose the bill—did not think that the power to compel testimony by granting immunity should be exercised at all by Congressional committees. "The granting of immunity," he said, "ought to be under definite safeguards" as "in a court of record" where "a judge or presiding officer guards the interests of the witness and of the government."

Senator Cooper went on to a more fundamental objection. He agreed that "undoubtedly" Communists used the Fifth amendment and he saw no reason why any "loyal or good American, or innocent American" should be unwilling to answer questions as to Communist party membership. But he said that while he wanted to protect the country from "subversion", he also wanted "to protect the free structure itself." He said the Bill of Rights protects "the individual who may be guilty, as well as the individual who is innocent" but that only so could "the guaranty of individual rights from oppression" be made effective. "When for reasons of expediency or emergency, we weaken these individual rights and give inordinate powers or emergency powers to any branch of our government," Cooper warned the Senate, "it is the record of history that at last that power will be used wrongfully, or will be used unwisely, or against innocent individuals."

The roll was called. Among the Democrats who answered were some who are usually or occasionally on the liberal side: the minority leader, Sparkman (D. Ala.), Douglas (D. Ill.), Jackson (D. Wash.), Magnuson (D. Wash.), Humphrey (D. Minn.), and Murray (D. Mont.). None of these said a word during the debate. As on an earlier occasion this year when Senator George of Georgia expressed grave misgivings about the McCarran bill, it was left to a right wing Southern Democrat, Hoey of North Carolina, to make the most sweeping attack upon the bill.

Senator Hoey expressed his friendship and admiration for McCarran. He said he usually followed McCarran's leadership. But Hoey said, "I am opposed to the entire bill. I believe we are going right in the face of the Constitution. The Constitution of the United States provides that no person shall be re-

Full Text of The New McCarran Bill as Passed By the Senate

"No witness shall be excused from testifying or from producing books, papers, and other records and documents before either House, or before any committee of either House, or before any joint committee of the two Houses of Congress on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, when the record shows—

"(1) in the case of proceedings before one of the Houses of Congress, that a majority of the Members present of that house, or

"(2) in the case of proceedings before a committee, that two thirds of the members of the full committee, including at least two members of each of the two political parties having the largest representation on such committees

"shall by affirmative vote have authorized that such person be granted immunity under this section with respect to the transactions, matters, or things concerning which, after he has claimed his privilege against self-incrimination, he is nevertheless compelled by direction of the presiding officer or the chair to testify. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which after he has claimed his privilege against self-incrimination he is nevertheless so compelled to testify, or produce evidence, documentary or otherwise.

"No official paper or record required to be produced hereunder is within the said privilege.

"No person shall be exempt from prosecution or punishment for perjury or contempt committeed in so testifying.

"At least one week in advance of voting on the question of granting immunity to any witness under this act the Attorney General shall be informed of the intention to consider such question, and shall have assented to the granting of such immunity: Provided, That if the Attorney General does not assent to immunity within one week after requested by the committee, immunity can nevertheless be granted by the committee if by resolution of the particular House of the Congress having jurisdiction over the committee, said House by a majority yea-and-nay vote authorizes the granting of immunity."

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. . . While The "Liberal" Morse Helped McCarran Put It Over

quired to testify against himself. We are undertaking to say that a committee of Congress can do what a court cannot do. The courts can grant immunity, but they cannot force a witness to testify against himself . . . The Constitution says a man does not have to do that. I do not believe Congress ought to pass a measure such as the one before us."

I am in hearty accord," Senator Hoey went on, "with all the purposes to go after the Communists, to investigate and prosecute them, and all that, but . . . I do not believe we should forget the fact that the Constitution is for the protection of all the people. There are other persons besides Communists in this country. I do not believe we should confer upon any committee of the Congress the power to take away the rights which the Constitution gives to every individual and to every citizen."

III

Given some leadership, the liberals might have been rallied behind this appeal from one of the respected conservatives of the Senate. But when Hoey finished, Morse of Oregon, took the floor, and on this occasion as before in this session (see the *Weekly* for last March 14), he helped McCarran.

It was a smooth performance. The Independent from Oregon did not think the issue ought to be decided on "the basis of a black or white determination." There was no doubt, Morse said, that McCarran was correct, "when he points out that there is a dangerous conspiracy abroad in the land, which I think threatens our internal security". On the other hand, Morse could not "escape the conclusion expressed by the Senator from North Carolina . . . that the proposal of the Senator from Nevada *in its present form*—and I shall offer an amendment to it before I close—would create the possibility of abuse." The italics are added. They call attention to the distortion of Hoey's argument by Morse. Senator Hoey did not object to the bill "in its present form." He was against *any* measure which would compel a man to testify against himself.

Morse then offered his own "compromise." But this abandoned the fight against compulsory testimony in principle and focussed on the procedure by which testimony was to be compelled. Kefauver wanted to make the grant of immunity subject to the approval of the Attorney General. The most McCarran would offer was an amendment giving the Attorney General a week's notice, during which that official might state any objections to the committee.

Morse proposed as a compromise that if the Attorney General did not assent within ten days to the proposed grant of immunity, the grant might nonetheless be made on a two-thirds vote of the house to which the Congressional committee belonged. Kefauver, for some reason, asked that this be made one week instead of 10 days. Morse agreed. Then McCarran said he would also agree if Morse would change his amendment to provide that the resolution compelling testimony might be passed by majority instead of two-thirds vote.

The difference is considerable. It is the difference between a situation in which a determined minority may defend a witness and one in which the majority party may do as it pleases. But Morse accepted the change, declaring "I want to say to the Senator from Nevada that we have not been as far apart in our objectives as some of our remarks might seem to indicate."

The Independent from Oregon, not at all independent where McCarran and McCarthy are concerned, had succeeded in diverting debate from principle to procedure, and then watering down even procedural safeguards. The final outcome is wide open to abuse.

The bill, as thus amended, was passed (as they say in the Senate) by yea-and-nay, without a recorded vote. After such a vote, any Senators who wish to be recorded may rise and announce their vote. Only ten Senators asked that their names be recorded as having voted against the bill. The lone Republican among them was Cooper of Kentucky. Two right wing Southern Democrats were among the ten—Stennis of Mississippi and McClellan of Arkansas, the latter one of the three Democrats who resigned last week from the McCarthy committee. "I believe the bill is unconstitutional," McClellan said. The other recorded dissenters were Magnuson and Jackson of Washington, Kerr of Oklahoma, Lehman of New York, Hennings of Missouri, Murray of Montana, Hayden of Arizona.

McCarran's bill to circumvent the Fifth amendment had finally cleared its first hurdle. Whether it passes the House may depend on how much public sentiment may be aroused to force hearings. We urge every reader to act. Write your Congressman. Alert your friends.

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Voices Raised Against The New McCarran "Immunity" Bill

Dean Erwin N. Griswold, Harvard Law School: **"Even when immunity from prosecution is granted, there is a certain element inconsistent with our traditions in requiring a person to give testimony which reflects against himself."**

Former Solicitor General Philip B. Perlman: **"The power to grant immunity from criminal prosecution should not be vested in a legislative body."**

Donald R. Richberg: **"I must express my feeling of doubt as to the wisdom of giving Congressional committees the right to over-ride the constitutional objection of a witness by granting him immunity from prosecution."**

Former Attorney General Francis Biddle: **"I can sense a reluctance on the part of several Senators to change so fundamentally our basic law with respect to claiming constitutional rights under the Fifth amendment. It is my sincere hope that the bill may be referred back to committee for further consideration."**

Governor Thomas E. Dewey, New York: **"The granting of immunity is an extraordinary power which should in all cases be carefully restricted."**

Donald C. Cook, chairman Securities and Exchange Commission: **"Unless the agency which is empowered to decide whether or nor to grant immunity is in position of sufficient facts and has sufficient knowledge of the laws involved that it can predict the consequences which would flow from a particular grant of immunity, it cannot possibly use the power with sufficient wisdom to protect the public interest."**

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JENNINGS PERRY'S PAGE

The Cold War Needs More Than a Change of Name

With that item of the report of the President's committee on information which suggests that the time has come to decommission the terms "cold war" and "psychological warfare" it is impossible not to be bemused. One wonders instantly whether this might be the opening wedge for a great new policy of verbal disarmament, the beginning of a transition from the diplomacy of epithet to the diplomacy of the soft word that turneth away wrath. In support of the possibility one hopefully recalls that from Truman to Eisenhower there has been *some* modification of language, and indeed of tone, in official references to the other side. Where the former could not say "Red" without a gritting of teeth and frothing at the lips General Ike has been able to discuss "those people" if not dispassionately at least without snarling. It just could be that in the judgment of the advisory committee querulousness now should be replaced by a more adult, a more civil address in international communications.

In the summary of the report released at the White House, the information committee headed by New York banker William H. Jackson gives the opinion that the "war" words not only are outmoded but fail to do justice to the efforts of the West to build "a world of peace and freedom." Unquestionably the point is well taken: the usage ill fits the aim. Unfortunately, however, much of the content of the report was withheld as highly secret and the quotations made public offer no guidance whatever to the rest of us who still will have to call the cold war something.

The oversight is especially regrettable since the good words which would handsomely describe our efforts have been preempted. While we have been speaking blithely of "psychological warfare" and the "cold war," the other people have been waving doves and intoning "peace" for years. We do have our dignity: we are not copycats. Up to now our limited awareness of the lameness of our own usages has been manifested mainly—almost solely—in a desultory attempt to discredit by hyphenation the good words seized upon by the other side; we have endlessly scoffed at their "peace offensives," "peace tricks," "peace propaganda." And even though in these associations the bad words have not completely corrupted the good, we hardly at so late a date could adopt, for the improvement of our own style, any of these terms we have in the dreary progress of the cold war held up to ridicule.

Unless, of course, what we now are seeking is not merely a euphemism—but an actual appeasement of the world's situation; unless what the President's committee is proposing is that we move to end the cold war itself—not merely to change its name. In that case, we should as glibly and as light-heartedly as anybody else talk of "peace" day in and day out, and if we should find our voice in tune with a chorus already resounding, why, so much the better for all.

Personally, I am eager to think that the sections of the Jackson group's report not published *did* consider and support the proposition that the cold war should be relegated in more than name only. The gain would be negligible, it seems to me, if, having cudgeled our wits to discover a really winsome name for our major foreign policy, it should turn out that the very substitution was a ruse, a strategem of sound effects, a part of the same old cold war. By the same token it is difficult to imagine anything more surely dispiriting than a fine new national effort, at the suggestion of the information committee, to prosecute psychological warfare right on, for the rest of our lives, under a dressed-up rose.

Peace, at the best humanity can hope to achieve, will be relative. There is no possibility that, while man keeps his imagination, the rivalry of social systems will not continue. We on our side and others on theirs always will point to our and their "higher standard of living," or to the promise of it, and seek thereby to appeal to the minds and hearts of the people.

But this competition need not be spiteful and poisonous, as the world has suffered it under the cold war; it can be cordial and instructive. And it need not and cannot be accompanied by hoarse, habitual counter-crying "Assassins, hate-mongers, enslavers!" The President may have been so advised; and if happily so, the parts of the Jackson committee's report held secret must have more meat in it than the parts thus far exposed.

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